

1999 SENATE JUDICIARY

SB 2049

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2049

Senate Judiciary Committee

Conference Committee

Hearing Date January 6, 1999

Tape Number	Side A	Side B	Meter #
1	x		0 - 2573
2	x		0 - 810
Committee Clerk Signature <i>Jackie Follmar</i>			

Minutes:

SB 2049 relates to the entry of a safe deposit box.

SENATOR STENEHJEM opened the hearing on SB2049 at 9:30 A.M.

All were present.

VONETTE RICHTER, Legislative Council, Attorney, testified to explain SB2049. This bill was a result of action taken by the Interim Committee in response to an issue pointed out by Senator Traynor that in 1995 the Legislative Assembly repealed North Dakota Century Code 57-37.1-12 which provided procedure for accessing the contents of a safety deposit box after the death of an owner. This bill establishes a new procedure to access a safety deposit box. The first subsection of the bill provides an Affidavit procedure. When an individual presents an Affidavit stating that the box may contain a will or a document expressing burial wishes. The person submits this Affidavit to an employee of a safety deposit company, the employee is required to open the box

and examine the contents. Subsection 4 are the persons considered to be interested. These are the persons who could be authorized to submit these Affidavits. Subsection 2 and 3 provide for some exceptions where the box cannot be opened. Regarding the actual procedure for opening the box, the safety deposit box companies will remove the document that appears to be the will and place a copy of the document in the box. The original is then sent to the clerk of court of the county in which the deceased person last resided or if that isn't known, send it to the clerk of court of the county where the safety deposit box is located. The same procedure for burial wishes or funeral arrangements. Subsection 7 provides that the box may also be opened for purposes of inventory of the contents of the box. The procedure is that an employee would make an inventory of the box and a list of the contents would be sent to the clerk of court in the county where the deceased person last lived. The contents must remain in the box. The bill provides that no contents of the box other than a will or documents stating burial wishes can be removed from the box.

SENATOR TRAYNOR asked if this draft of 2049 is patterned after Minnesota law.

VONNETTE RICHTER stated that she believed so.

MARILYN FOSS, North Dakota Bankers Association, testified against SB2049. Testimony is attached.

SENATOR TRAYNOR stated that as of now we have no procedure for access except the presentation of certified copies of letters by the personal representative that would authorize the bank to open the box.

Discussion on the roles of banks and their lease agreements. Need some sort of procedure regarding access to the safety deposit box.

JOEL GILBERTSON, Independent Community Banks of North Dakota, testified against SB2049. This bill is too complex and poses a number of obligations on banks that do not need to be imposed on banks. Set up a streamline procedure that is not costly to the people involved. A streamlined procedure by Affidavit would be appropriate. Take the inventory requirement.

SENATOR TRAYNOR questioned how the filing fee would work for the special administrator and then for the probate.

SENATOR STENEHJEM questioned how an Affidavit would work.

JIM GANJE, Attorney for the Supreme Court, appeared to explain a few aspects regarding the Clerks of Court role regarding safety deposit boxes.

SENATOR TRAYNOR wanted a list of attorneys to be contacted for the next hearing.

SENATOR STENEHJEM stated the hearing would be reconvened at 9:00 A.M. on Wednesday, January 13, 1999.

SENATOR STENEHJEM SUSPENDED the Hearing on SB2049.

Tape 2, side A.

January 13, 1999.

SENATOR STENEHJEM opened the hearing on SB2049 at 9:00 A.M.

All were present.

MARILYN FOSS, North Dakota Bankers Association, testified on SB2049. With the proposed amendments, we would remove our objections to the bill. Amendments attached.

SENATOR TRAYNOR asked if the amendments provide interested party disposition of the inventory.

MARILYN FOSS stated that the interested party will make the inventory of the box.

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Senate Judiciary Committee

Bill/Resolution Number SB2049

Hearing Date ~~January 6, 1999~~

1-13-99

JOEL GILBERTSON, Independent Community Banks, testified in support of SB2049 with the amendments.

SENATOR TRAYNOR made a motion to adopt the amendments, SENATOR WATNE seconded. Motion carried.

SENATOR TRAYNOR made a motion for DO PASS AS AMENDED, SENATOR BERCIER seconded.

SENATOR TRAYNOR will carry the Bill.

6 - 0 - 0

Date: 1-13-99
 Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

Senate Judiciary _____ Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS Amended

Motion Made By Traynor Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Traynor

REPORT OF STANDING COMMITTEE

SB 2049: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2049 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "an employee of"

Page 1, line 9, replace "shall" with "may" and replace "and examine the contents in the presence of" with "for"

Page 1, line 10, remove "that" and after "the" insert "following"

Page 1, line 11, remove "individual believes"

Page 1, line 14, remove "and"

Page 1, line 19, replace "obtain" with "make" and after "box" insert "; and"

- c. There has been no application for or appointment of a personal representative or administrator for the decedent's estate"

Page 1, line 23, replace the colon with "the lessee's key or combination is not available."

Page 1, remove line 24

Page 2, remove lines 1 through 3

Page 2, remove lines 13 through 31

Page 3, remove lines 1 through 11

Page 3, line 12, replace "8." with "5."

Page 3, line 22, replace "9." with "6."

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2049


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. : 2049

House Judiciary Committee

Conference Committee

Hearing Date : February 15, 1999

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature 			

Minutes:

VONETTE RICHTER (LC) This bill is intended to create a method whereby a safety deposit box can be opened before the appointment of a personal representative for such purposes as looking for funeral instructions, a will, etc.

MARYLIN FOSS (ND Bankers Assn.) We are for this bill as it appears now. The Senate made some amendments which covered our concerns. We have been advising our members to cover this in the box rental agreement. Once a personal representative is appointed, he or she can open the box.

COMMITTEE ACTION: March 16, 1999

REP. KLEMIN moved that the committee recommend that the bill DO PASS. Rep. Delmore seconded and the motion passed on a roll call vote with 12 ayes, 0 nays and 3 absent. Rep.

Klemin was assigned to carry the bill on the floor.

Date: _____
Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By Hawken Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD			REP. MARAGOS		
REP. GORDER	✓		REP. MEYER		
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 12 No 0

Absent 3

Floor Assignment Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 16, 1999 1:05 p.m.

Module No: HR-31-3133
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2049, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2049 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2049

TRAYNOR, RUTTEN & TRAYNOR

ATTORNEYS AT LAW

DEVILS LAKE, NORTH DAKOTA 58301

TRAYNOR BUILDING
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MACK V. TRAYNOR (1892-1970)
JOHN T. TRAYNOR
THOMAS E. RUTTEN
THOMAS TRAYNOR, JR.

LAVERNE LEIER
NOTARY

August 24, 1998

Wes Argue
Professional Corporation
Attorney at Law
#1 Wall Street
P. O. Box 108
Hamilton, ND 58238-0108

In re: Safe Deposit Box Access

Dear Wes:

After I received your recent letter I took this matter up with the Interim Judiciary Committee chaired by Wayne Stenehjem. We discussed it at the meeting in Fargo on August 17 and the Legislative Council is going to work on the matter.

I suggested to Tim Dawson of the Legislative Council that he consult with Sandi Tabor of the Bar Association and perhaps contact should be made with Vern Neff.

I am sending Tim a copy of this letter together with a copy of your letter of August 21st. I think that the suggestion made in your letter of August 21st is a good one and could be a legislative change that would solve the matter.

I have also spoken to District Judge Lee Christofferson and he would welcome a legislative change to remedy this situation.

Thank you.

Respectfully,

TRAYNOR, RUTTEN & TRAYNOR



John T. Traynor

JTT/11
c: Tim Dawson

MEMO

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FROM: **Wes Argue**
Attorney at law
FOR: WES ARGUE, P.C.
#1 Wall Street - P O Box 108
Hamilton ND 58238-0108
Telephone: (701) 265-8228

SUBJECT: Safe Deposit Box Access

DATE: August 28, 1998

In the interests of keeping everyone informed, I am enclosing a copy of a letter I received from Jack Traynor regarding the progress on the proposed legislation.

Enclosure

TESTIMONY OF MARILYN FOSS IN OPPOSITION TO SB 2049
(On Behalf of the North Dakota Bankers Association)

Chairman Stenehjem, members of the Senate Judiciary Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association and am appearing before you on its behalf to oppose SB 2049.

This bill applies to “safe deposit” companies. Although the bill does not define the term “safe deposit company” I am assuming that it is intended to apply to banks and savings associations as providers of safe deposit box services in North Dakota. So far as I am aware, anyway, there are no independent safety deposit companies operating in North Dakota.

In 1997 the legislative assembly by enacting SB 2072 repealed sections 57-37.1-12, 57-37.1-13 and 57-37.1-14 of the North Dakota Century Code. Those sections of the law required banks to be present and responsible when a deceased customer’s safety deposit box was opened and inventoried and required the bank to file the inventory with the state tax department. In essence, this bill rejects the action of the 1997 legislative assembly and reimposes the obligation upon a “safety deposit company” to provide employees to oversee the opening of a safe deposit box when a bank customer dies. It is not a matter of “housekeeping” and is unnecessary.

Under the bill a number of obligations are imposed upon the safe deposit box company: an employee of a “safe deposit company” is required to decide what is “satisfactory proof of death of a sole lessee or the last surviving co-lessee” of a safe deposit box and , if such proof is made, is required to open and examine the contents of the box in the presence of an interested person as that term is defined by the bill. However, the bank employee is prohibited from opening a box if it has received letters of appointment of a personal representative or a court order and may refuse to open the box under certain other circumstances.

Depending on the purpose for which the box is opened, the employee has a number of duties. S/he is directed to remove what appears to be the will, to make a copy of it, and to replace the copy in the box, and to deliver the original to the clerk of court for the county in which the lessee resided prior to death, if that is known to the company. (How much searching the employee has to do to determine whether the company has this information - or what constitutes knowledge - is unknown.) The company must also provide a copy of the will to the interested person upon their request

If the purpose of the opening is to find documents which are related to the disposition of the deceased, other rules apply. And, if the box is being opened for the purpose of an inventory, then the employee is required to make the inventory and to attest to its contents, and to deliver the inventory to the clerk of county court. Which county court is to receive the inventory depends on the company's knowledge. The requirements for wills and copies also apply here. ‘

It seems to us (and the last legislative assembly agreed) that the obligations which this bill imposes upon banks rest with a lessee, a personal representative or with an interested person and not with the bank. This is demonstrated by section 8 of the bill which relieves a bank of the responsibility of verifying the contents of an affidavit, the adequacy of the property description included in an inventory and for conversion of the lessee's property by a person other than the bank. Frankly, if the company or employee isn't responsible for deciding these things there is no reason to have three pages of legislation imposing the obligations in the first place.

I have advised numerous banks to address the issue of access after a lessee's death in their lease agreements and have told banks to treat a personal representative or person bearing an affidavit of collection as the decedent. So far as I am aware, this is being done today and has been done without substantial difficulty since August 1, 1997. If the process for obtaining access

to a decedent's safe deposit box isn't clear, all that is required is a clear statement that a bank may permit access to any person who has been named the personal representative of the decedent's estate or who supplies an affidavit which sets out the information in section 1(a) and (b). The bank can be protected by language similar to that of section 8. Neither the bank's involvement nor three pages of legislation is required .

Accordingly, I ask you to give this bill a "do not pass". Thank you.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

Page 1, line 8, remove “an employee of”

Page 1, line 9, replace “shall” with “may”

Page 1, line 9, remove “and examine the contents in the presence of”

Page 1, line 9, immediately before “ an” insert “for”

Page 1, line 10, remove “that”

Page 1, line 10, after “the” insert “following”

Page 1, remove line 11

Page 1, line 19, replace “obtain” with “make”

Page 1, line 19, replace “.” with “; and” insert:

“(4) There has been no application for or appointment of a personal representative or administrator for the decedent’s estate.”

Page 1, line 23, remove “.” and insert “the lessee’s key or combination is not available.”

Page 1, remove line 24

Page 2, remove lines 1 through 3

Page 2, remove lines 13 through 31

Page 3, remove lines 1 through 11

Page 3, line 12, replace “8” with “5”

Page 3, line 22, replace “9” with “6”

Re-number accordingly

Fifty-sixth
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 30.1-23 of the North Dakota
2 Century Code, relating to the entry of a safe deposit box.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 30.1-23 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Will searches, burial documents procurement, and inventory of contents.**

7 1. Upon being furnished with satisfactory proof of death of a sole lessee or the last
8 surviving co-lessee of a safe deposit box, the safe deposit company may open
9 the box for an individual who appears in person and furnishes an affidavit
10 stating the following:

11 a. The box may contain the will or deed to a burial lot or a document
12 containing instructions for the burial of the lessee or that the box may
13 contain property belonging to the estate of the lessee; and

14 b. The individual is an interested person and wishes to open the box:

15 (1) To conduct a will search;

16 (2) To obtain a document required to facilitate the lessee's wishes
17 regarding body, funeral, or burial arrangements; or

18 (3) To make an inventory of the contents of the box ; and

1 (4) There has been no application for or appointment of a personal
2 representative or administrator for the decedent's estate.

3 2. The safe deposit company may not open the box under this section if it has
4 received a copy of letters from the representative of the deceased lessee's
5 estate or other applicable court order.

6 3. The safe deposit company need not open the box if: the lessee's key or
7 combination is not available.

8 4. For purposes of this section, the term "interested person" means:

9 a. A person named as personal representative in a purported will of the lessee;

10 b. A person who immediately prior to the death of the lessee had the right of
11 access to the box;

12 c. The surviving spouse of the lessee;

13 d. A devisee of the lessee;

14 e. An heir of the lessee; or

15 f. A person designated by the lessee in a writing acceptable to the safe deposit
16 company which is filed with the safe deposit company before death.

17 5. The safe deposit company need not ascertain the truth of any statement in the
18 affidavit required to be furnished under this section, and when acting in reliance
19 upon an affidavit, it is discharged as if it dealt with the personal representative of
20 the lessee. The safe deposit company is not responsible for the adequacy of
21 the description of any property included in an inventory of the contents of a safe
22 deposit box, nor for conversion of the property in connection with actions
23 performed under this section, except for conversion by intentional acts of the

1 company or its employees, directors, officers, or agents. If the safe deposit
2 company is not satisfied that the requirements of this section have been met, it
3 may decline to open the box.

4 6. No contents of a box other than a will and a document required to facilitate the
5 lessee's wishes regarding body, funeral, or burial arrangements may be
6 removed pursuant to this section.